IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 6090 of 2006
Date of decision 3 .5.2007

Sukhwant Singh and others .. petitioners

Versus

State of Punjab and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr.PK Goklaney, Advocate for the petitioners
Mr. Amol Rattan Singh Addl. AG Punjab.

M.M.Kumar, J.

This order shall dispose of two petitions namely CWP No. 6090 of 2006 and 8871 of 2005 as common question of law and facts are involved in both these petitions. However, facts are being referred from CWP No. 6090 of 2006. The prayer made in this petition filed under Article 226 of the Constitution of India is that a direction be issued to the respondents to merge 50 percent of the dearness allowance with basic pay/pension and grant all consequential benefits. In that regard reliance has been placed on government instructions dated 1.6.2004 (Annexure P.8) and also subsequent instructions dated 8.2.2007 (Annexure P.17).

Brief facts of the case are that the petitioners have retired from the Punjab Privately Managed Recognised Aided Schools on attaining the age of superannuation. In pursuance to Rule 22 A of the Punjab Privately Managed Recognised Schools Employees (Security of Service) Rules, 1981 (for brevity 'the Rules') a scheme was framed for grant of retirement benefits to the employees of the Punjab Privately Managed Recognised Aided Schools which was called Punjab Privately Managed Recognised Aided

Schools Retirement Benefits Scheme, 1992 (for brevity 'the Scheme') which was enforced w.e.f. 5.2.1987. The petitioners had exercised option to adopt the Scheme. It is conceded position that 4th Pay Commission was constituted by the respondent- State of Punjab and the pensionary benefits available to employees who had retired from privately managed aided recognised schools were also revised. It is appropriate to mention that a parity is maintained in the pay scales between the teachers/employees of the privately managed recognised aided schools and those of Government schools. It is accordingly claimed that the dearness allowance is required to be treated as dearness pay at par with the government employees. It has also been claimed that on 30.9.2003 (Annexure P.7) the Government has issued instructions stating that the employees who had retired from privately recognised aided schools were entitled to payment of pension, dearness allowance at par with the government employees but subsequently on 1.6.2004 a decision was taken by the Government to merge 50 percent of dearness pay/ relief with basic pay/pension w.e.f. 1.4.2004. The petitioners have complained that the Government has directed the disbursing banks not to release enhanced dearness allowance and has also ordered recovery of the amount already paid and that recovery is being effected without any notice.

In response to the notice of motion, the respondents have filed their written statement and have contested the claim. The principal stand taken is that the executive orders issued in favour of the employees awarding some concession to them in respect of treating the dearness allowance / relief as dearness pay would not create any legal right and the State Government was not under any statutory obligation to do so. However, it could not be successfully argued by the learned State Counsel

that the State Government has now issued instructions on 8.2.207 regarding release of instalment of dearness allowance to those who had retired from the privately managed recognised aided schools. According to the afore-mentioned executive order, the employees who have retired from privately managed recognised aided schools have been held entitled for release of pension at par with the Government employees and they are also entitled to have the benefit of dearness pay at par with the Government employees. It has further been pointed out in the executive order that no clarification was required in that regard and the Director was required to take decision at its own level. The afore-mentioned executive order is latest.

In view of the above, we dispose of the writ petitions with a direction to the respondents to release pension of the petitioners at par with their counter parts in the Government and grant them the benefit of dearness pay at par with their counter parts in the Government. The dearness allowance instalments are also required to be at par with the Government employees. We also direct that no recovery from the petitioners should be effected as per the directions issued by the Hon'ble Supreme Court in the case of Sahib Ram. v.State of Haryana 1995 (1) SCT 668. The needful shall be done by the respondents within a period of two months from the date of receipt of certified copy of this order.

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

3.5.2007
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